

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

TEVA PHARMACEUTICALS USA, INC.,)
TEVA PHARMACEUTICAL INDUSTRIES LTD.,)
and NOVOPHARM, LTD.,)

Counterclaim Plaintiffs,)

v.)

ABBOTT LABORATORIES,)
FOURNIER INDUSTRIE ET SANTÉ, and)
LABORATOIRES FOURNIER S.A.,)

Counterclaim Defendants.)

REDACTED PUBLIC VERSION

C.A. No. 02-1512 (SLR)

CONSOLIDATED

IMPAX LABORATORIES, INC.,)

Counterclaim Plaintiff,)

v.)

ABBOTT LABORATORIES,)
FOURNIER INDUSTRIE ET SANTÉ, and)
LABORATOIRES FOURNIER S.A.,)

Counterclaim Defendants.)

C.A. No. 03-120 (SLR)

CONSOLIDATED

IN RE TRICOR DIRECT PURCHASER)
ANTITRUST LITIGATION)

C.A. No. 05-340 (SLR)

THIS DOCUMENT RELATES TO:)
ALL ACTIONS)

CONSOLIDATED

IN RE TRICOR INDIRECT PURCHASER)
ANTITRUST LITIGATION)

C.A. No. 05-360 (SLR)

THIS DOCUMENT RELATES TO:)
ALL ACTIONS)

CONSOLIDATED

DEFENDANTS' JOINT APPENDIX IN SUPPORT OF THEIR SUMMARY JUDGMENT
REPLY BRIEFS

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Dated: June 16, 2008

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**DEFENDANTS' JOINT APPENDIX IN SUPPORT OF THEIR SUMMARY
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DEPARTMENT OF HEALTH & HUMAN SERVICES

Public Health Service

Food and Drug Administration
Rockville MD 20857

NDA 19-766/S-034, S-036

Merck & Co., Inc.
Attention: Robert Silverman, M.D., Ph.D.
Senior Director, Regulatory Affairs
Sumneytown Pike, P.O. Box 4
BLA-20
West Point, PA 19486

NOV 22 1999

Dear Dr. Silverman:

Please refer to your supplemental new drug applications dated January 21, 1999, received January 22, 1999, submitted under section 505(b) of the Federal Food, Drug, and Cosmetic Act for Zocor (simvastatin) Tablets.

We acknowledge receipt of your submissions dated January 21(second submission) and November 16, 1999.

These supplemental new drug applications provide for a new indication for the treatment of patients with isolated hypertriglyceridemia (Fredrickson Type IV) (S-034) and for a new indication for the treatment of Type III hyperlipoproteinemia (S-036).

We have completed the review of these supplemental applications, as amended, and have concluded that adequate information has been presented to demonstrate that the drug product is safe and effective for use as recommended in the agreed upon labeling text. Accordingly, these supplemental applications are approved effective on the date of this letter.

The final printed labeling (FPL) must be identical to the submitted draft labeling (package insert submitted November 16, 1999).

Please submit 20 copies of the FPL as soon as it is available, in no case more than 30 days after it is printed to each application. Please individually mount ten of the copies on heavy-weight paper or similar material. For administrative purposes, these submissions should be designated "FPL for approved supplement NDA 19-766/S-034, S-036." Approval of these submissions by FDA is not required before the labeling is used.

Be advised that, as of April 1, 1999, all applications for new active ingredients, new dosage forms, new indications, new routes of administration, and new dosing regimens are required to contain an assessment of the safety and effectiveness of the product in pediatric patients unless this requirement is waived or deferred (63 FR 66632). We note that you have not fulfilled the

NDA 19-766/S-034, S-036

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requirements of 21 CFR 314.55 (or 601.27). We are deferring submission of your pediatric studies until March 31, 2002. However, in the interim, please submit your pediatric drug development plans within 120 days from the date of this letter unless you believe a waiver is appropriate.

If you believe that this drug qualifies for a waiver of the pediatric study requirement, you should submit a request for a waiver with supporting information and documentation in accordance with the provisions of 21 CFR 314.55 within 60 days from the date of this letter. We will notify you within 120 days of receipt of your response whether a waiver is granted. If a waiver is not granted, we will ask you to submit your pediatric drug development plans within 120 days from the date of denial of the waiver.

Pediatric studies conducted under the terms of section 505A of the Federal Food, Drug, and Cosmetic Act may result in additional marketing exclusivity for certain products (pediatric exclusivity). You should refer to the *Guidance for Industry on Qualifying for Pediatric Exclusivity* (available on our web site at www.fda.gov/cder/pediatric) for details. If you wish to qualify for pediatric exclusivity you should submit a "Proposed Pediatric Study Request" (PPSR) in addition to your plans for pediatric drug development described above. We recommend that you submit a Proposed Pediatric Study Request within 120 days from the date of this letter. If you are unable to meet this time frame but are interested in pediatric exclusivity, please notify the division in writing. FDA generally will not accept studies submitted to an NDA before issuance of a Written Request as responsive to a Written Request. Sponsors should obtain a Written Request before submitting pediatric studies to an NDA. If you do not submit a PPSR or indicate that you are interested in pediatric exclusivity, we will proceed with the pediatric drug development plan that you submit and notify you of the pediatric studies that are required under section 21 CFR 314.55. Please note that satisfaction of the requirements in 21 CFR 314.55 alone may not qualify you for pediatric exclusivity. FDA does not necessarily ask a sponsor to complete the same scope of studies to qualify for pediatric exclusivity as it does to fulfill the requirements of the pediatric rule.

If a letter communicating important information about this drug product (i.e., a "Dear Health Care Practitioner" letter) is issued to physicians and others responsible for patient care, we request that you submit a copy of the letter to this NDA and a copy to the following address:

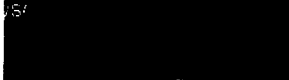
MEDWATCH, HF-2
FDA
5600 Fishers Lane
Rockville, MD 20857

We remind you that you must comply with the requirements for an approved NDA set forth under 21 CFR 314.80 and 314.81.

NDA 19-766/S-034, S-036
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If you have any questions, contact Margaret Simoneau, R.Ph., Regulatory Management Officer,
at (301) 827-6418.

Sincerely,



Solomon Sobel, M.D.
Director
Division of Metabolic and Endocrine Drug Products
Office of Drug Evaluation II
Center for Drug Evaluation and Research

APPEARS THIS WAY ON ORIGINAL

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on June 24, 2008, the foregoing was caused to be electronically filed with the Clerk of the Court using CM/ECF which will send electronic notification of such filing to all registered participants.

In addition, the undersigned hereby certifies that true and correct copies of the foregoing were caused to be served via electronic mail on June 24, 2008 upon the following parties:

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